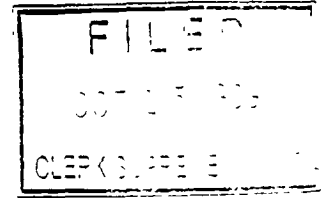


IN THE COURT OF APPEALS OF IOWA

No. 9-324 / 98-0798
Filed October 15, 1999

**CEDAR RAPIDS WELDING SUPPLY, INC.,
and RUTH LAMB,**
Plaintiffs-Appellants,



vs.

**AJRAM INTERIORS & DESIGN STUDIO and
KALIL AJRAM,**
Defendants-Appellees.

Appeal from the Iowa District Court for Linn County, Kristin L. Hibbs, Judge.

The plaintiffs appeal from a district court decision dismissing their petition to establish an easement by prescription over a portion of the defendants' parking lot. They contend the court erred in ruling that even though they established a prescriptive easement, the easement could not be enforced against the defendants because they did not have notice of the easement at the time they purchased the servient estate. They maintain the court erred in ruling the easement did not apply to the defendants due to lack of notice. Alternatively, they claim the defendants had sufficient notice of the easement. **REMANDED.**

Richard F. Mitvalsky and Frank S. Mitvalsky of Gray, Stefani & Mitvalsky, P.L.C., Cedar Rapids, for appellants.

Lorraine K. Ingels of Klinger, Robinson & Ford, L.L.P., Cedar Rapids, for appellees.

Heard by Sackett, C.J., and Huitink and Mahan, JJ.

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SACKETT, C.J.

Plaintiffs-Appellants Cedar Rapids Welding Supply, Inc. and Ruth B. Lamb appeal from an adverse ruling in their action to establish a permanent prescriptive easement in their favor over a portion of a parking lot owned by defendants-appellees Ajram Interiors & Design Studio and Kalil Ajram. Plaintiff further sought a temporary and permanent injunction to enjoin defendant from interfering with their right to use the easement. The district court found plaintiffs had a prescriptive easement without defining the easement as to size and location, but determined the easement was not apparent and an inspection of the premises would not have disclosed its existence to Defendants at the time they purchased the servient estate. Based on this finding the district court refused plaintiff's claim for relief. There is no challenge to the district court's finding plaintiffs had a defined prescriptive easement. The issue is whether defendant took the property subject to the prescriptive easement. We find they did and reverse the district court's finding to the contrary.

An alley abutting plaintiff's property adjoins defendant's property to the east. Both tracks are improved. Plaintiff Cedar Rapids Welding Supply, Inc. sells welding equipment and tools and there are numerous deliveries from and to the business.

Plaintiff purchased its track in 1969. At the time there were four docking bays for trucks to load and unload on the west side of plaintiff's building. To access the bays it was necessary that a number of trucks cross a portion of the parking lot on defendant's property over which the district court found plaintiff had a prescriptive

easement. The four docking bays have continued to exist and be used despite plaintiffs' subsequent construction of docking bays on the east side of their property.

Defendants purchased their property in 1994 from Jay Johnson. In 1996, two years later, defendant constructed a steel fence that limited the access plaintiff had heretofore utilized on defendant's property. This suit followed.

In addition to basically uncontroverted evidence that plaintiff had used a portion of defendant's parking lot for trucks using his loading bay from the time he purchased the land in 1969, there also was evidence of an agreement between plaintiff and Johnson in 1993. At that time Johnson was putting a new surface on the parking lot plaintiff paid to increase the asphalt layer from three to four inches in the area on defendant's land trucks used to enter plaintiff's west loading dock.

Johnson, who sold the land to defendants in 1994, testified that he did not believe plaintiff had any vested property right in the property nor was he as the owner precluded from fencing it.

Johnson also testified:

I did not inform Mr. Ajram that Cedar Rapids Welding had any right to that property. I informed him that they paid for reinforcing and they had always used that as a turn-around and how he -- and he now as the landowner, how he negotiated with Cedar Rapids Welding was entirely up to him.

The district court concluded plaintiff established that a prescriptive easement existed after 1993 and would be enforceable against Johnson if he were still the

owner. The district court did not define the easement as to size or location. These findings are not challenged.

The district court then found the easement was not recorded and not easily observed even with a careful inspection and defendants had no notice plaintiff made any claim to use defendant's property.

Plaintiffs contend the district court erred (1) in finding the easement was not apparent and could not be disclosed by inspection and (2) in concluding Kalil Ajram did not have notice of the easement prior to purchasing the land.

This case was tried in equity; therefore, our review is de novo. *Davidson v. Van Lengen*, 226 N.W.2d 436, 438 (Iowa 1978). We give weight to the fact findings of the trial court but are not bound by them. See Iowa R.App.P. 14(f)(7). A purchaser of the servient estate will be charged with notice of all apparent easements and the purchaser is bound where a reasonably careful inspection of the premises would disclose the existence of the easement. *National Properties Corp. v. Polk County*, 386 N.W.2d 98, 106 (Iowa 1986), *McKeon* at 1120, 29 N.W.2d at 522.

A purchaser is considered to have actual knowledge notice of an easement if the purchaser has sufficient facts to be charged with a duty to make an inquiry which would reveal the existence of the easement. *RF Gilmore v. The New Beck Levee District, Harrison County*, 212 N.W.2d 477, 479 (Iowa 1973).

The use by plaintiff's of the easement was obvious. A cursory inspection would have shown large trucks used it to access bays in plaintiff's building.

Johnson's statements that plaintiffs had paid for re-enforcing and had always used the property as a turn around put defendants on notice to make further inquiry as to the rights to defendant's land. We reverse the district court's finding defendant did not take subject to the easement and hold they did.

The record before us is not sufficient to define and locate the easement. We remand to the district court for that purpose.

Remanded.